



Digest Correction  
Reprinted  
April 5, 2019

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## ENGROSSED SENATE BILL No. 174

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DIGEST OF SB 174 (Updated April 10, 2019 2:40 pm - DI 92)

**Citations Affected:** IC 34-11; IC 34-24; IC 35-43; noncode.

**Synopsis:** Fertility fraud and deception. Establishes a cause of action for civil fertility fraud and provides that a prevailing plaintiff may be awarded: (1) compensatory and punitive damages; or (2) liquidated damages of \$10,000. Specifies the statute of limitations for civil fertility fraud. Increases the penalty for deception involving the identity of a person or the identity or quantity of property to a Level 6 felony if the offense involves a misrepresentation relating to: (1) a medical procedure, device, or drug; and (2) human reproductive material. Urges the legislative council to assign the topic of fertility laws, including gestational surrogacy, to an appropriate study committee.

**Effective:** July 1, 2019.

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**Sandlin, Bohacek, Head, Ford J.D.,  
Freeman, Buck, Randolph Lonnie M,  
Taylor G**

(HOUSE SPONSORS — PRESSEL, SPEEDY, SCHAIKLEY, DELANEY)

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January 3, 2019, read first time and referred to Committee on Corrections and Criminal Law.

January 10, 2019, reassigned to Committee on Judiciary pursuant to Rule 68(b).

January 24, 2019, amended, reported favorably — Do Pass.

February 19, 2019, read second time, amended, ordered engrossed.

February 20, 2019, engrossed.

February 21, 2019, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 4, 2019, read first time and referred to Committee on Judiciary.

April 2, 2019, amended, reported — Do Pass.

April 4, 2019, read second time, amended, ordered engrossed.

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ES 174—LS 6340/DI 106





First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

## ENGROSSED SENATE BILL No. 174

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A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 34-11-2-15 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2019]: **Sec. 15. (a) Except as provided in subsection (b), an action**  
4 **for civil fertility fraud (IC 34-24-5) must be commenced not later**  
5 **than:**  
6       **(1) ten (10) years after the eighteenth birthday of the child; or**  
7       **(2) if subdivision (1) does not apply, twenty (20) years after**  
8       **the procedure was performed.**  
9       **(b) An action for civil fertility fraud that would otherwise be**  
10 **barred under this section may be commenced not later than five (5)**  
11 **years after the earliest of the date on which:**  
12       **(1) the person first discovers evidence sufficient to bring an**  
13 **action against the defendant through DNA (deoxyribonucleic**  
14 **acid) analysis;**  
15       **(2) the person first becomes aware of the existence of a**  
16 **recording (as defined in IC 35-31.5-2-273) that provides**  
17 **evidence sufficient to bring an action against the defendant;**

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1           or

2           (3) the defendant confesses to the offense.

3           SECTION 2. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS  
4 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
5 1, 2019]:

6           **Chapter 5. Civil Fertility Fraud**

7           **Sec. 1. The following definitions apply throughout this chapter:**

8           (1) "Human reproductive material" means:

9           (A) a human spermatozoon or ovum; or

10           (B) a human organism at any stage of development from  
11 fertilized ovum to embryo.

12           (2) "Physician" means a physician licensed under IC 25-22.5.

13           (3) "Health care provider" has the meaning set forth in  
14 IC 34-30-12.5-2.

15           **Sec. 2. A:**

16           (1) woman who gives birth to a child after being treated for  
17 infertility by a physician;

18           (2) spouse of the woman;

19           (3) surviving spouse of the woman; or

20           (4) child born as a result of the actions of a physician  
21 described in this chapter;

22 may bring an action against a health care provider who knowingly  
23 or intentionally treated the woman for infertility by using the  
24 health care provider's own spermatozoon or ovum, without the  
25 patient's informed written consent to treatment using the  
26 spermatozoon or ovum.

27           **Sec. 3. A donor of human reproductive material may bring an  
28 action against a health care provider who:**

29           (1) treats a patient for infertility by using human reproductive  
30 material donated by the donor; and

31           (2) knows or reasonably should have known that the human  
32 reproductive material was used:

33           (A) without the donor's consent; or

34           (B) in a manner or to an extent other than that to which  
35 the donor consented.

36           **Sec. 4. A plaintiff who prevails in an action under this chapter  
37 is entitled to reasonable attorney's fees, the costs of the fertility  
38 treatment (in an action brought under section 2 of this chapter),  
39 and:**

40           (1) compensatory and punitive damages; or

41           (2) liquidated damages of ten thousand dollars (\$10,000).

42           **Sec. 5. (a) A person who brings an action under section 2 of this**



chapter has a separate cause of action for each child born as the result of the fraudulent fertility treatment.

(b) A person who brings an action under section 3 of this chapter has a separate cause of action for each individual who received fertility treatment with the donor's human reproductive material.

**Sec. 6. Nothing in this chapter may be construed to prohibit a person from pursuing any other remedy provided by law.**

SECTION 3. IC 35-43-5-3, AS AMENDED BY P.L.85-2017, SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) A person who:

- (1) being an officer, manager, or other person participating in the direction of a credit institution, knowingly or intentionally receives or permits the receipt of a deposit or other investment, knowing that the institution is insolvent;
- (2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property, employment, or an educational opportunity;
- (3) misapplies entrusted property, property of a governmental entity, or property of a credit institution in a manner that the person knows is unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;
- (4) knowingly or intentionally, in the regular course of business, either:
  - (A) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity of any commodity; or
  - (B) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;
- (5) with intent to defraud another person furnishing electricity, gas, water, telecommunication, or any other utility service, avoids a lawful charge for that service by scheme or device or by tampering with facilities or equipment of the person furnishing the service;
- (6) with intent to defraud, misrepresents the identity of the person or another person or the identity or quality of property;
- (7) with intent to defraud an owner of a coin machine, deposits a slug in that machine;
- (8) with intent to enable the person or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug;



(9) disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to promote the purchase or sale of property or the acceptance of employment; (10) with intent to defraud, misrepresents a person as being a physician licensed under IC 25-22.5;

(11) knowingly and intentionally defrauds another person furnishing cable TV service by avoiding paying compensation for that service by any scheme or device or by tampering with facilities or equipment of the person furnishing the service; or

(12) knowingly or intentionally provides false information to a governmental entity to obtain a contract from the governmental entity;

commits deception, a Class A misdemeanor, **except as provided in subsection (b).**

**(b) However,** An offense under:

**(1) ~~subdivision (12)~~ subsection (a)(12)** is a Level 6 felony if the provision of false information results in financial loss to the governmental entity; **and**

**(2) subsection (a)(6) is a Level 6 felony if the misrepresentation relates to:**

**(A) a medical procedure, medical device, or drug; and**

**(B) human reproductive material (as defined in IC 34-24-5-1.**

~~(b)~~ **(c)** In determining whether an advertisement is false, misleading, or deceptive under subsection (a)(9), there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also the extent to which the advertisement fails to reveal material facts in the light of the representations.

~~(c)~~ **(d)** A person who knowingly or intentionally falsely represents:

(1) any entity as:

(A) a disadvantaged business enterprise (as defined in IC 5-16-6.5-1); or

(B) a women-owned business enterprise (as defined in IC 5-16-6.5-3);

in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-2) designed to assist disadvantaged business enterprises or women-owned business enterprises in obtaining contracts with public agencies for the provision of goods and services; or

(2) an entity with which the person will subcontract all or part of



1 a contract with a public agency (as defined in IC 5-16-6.5-2) as:

2 (A) a disadvantaged business enterprise (as defined in  
3 IC 5-16-6.5-1); or

4 (B) a women-owned business enterprise (as defined in  
5 IC 5-16-6.5-3);

6 in order to qualify for certification as an eligible bidder under a  
7 program that is conducted by a public agency designed to assist  
8 disadvantaged business enterprises or women-owned business  
9 enterprises in obtaining contracts with public agencies for the  
10 provision of goods and services;

11 commits a Level 6 felony.

12 SECTION 4. [EFFECTIVE JULY 1, 2019] (a) **The legislative**  
13 **council is urged to assign to an appropriate study committee the**  
14 **topic of fertility laws, including gestational surrogacy.**

15 (b) **This SECTION expires January 1, 2020.**



REPORT OF THE PRESIDENT  
PRO TEMPORE

Madam President: Pursuant to Senate Rule 68(b), I hereby report that Senate Bill 174, currently assigned to the Committee on Corrections and Criminal Law, be reassigned to the Committee on Judiciary.

BRAY

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 174, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Page 2, line 14, delete "has the meaning set forth" and insert "means:

**(A) a human spermatozoon or ovum; or**

**(B) a human organism at any stage of development from fertilized ovum to embryo."**

Page 2, delete line 15.

Page 3, delete lines 6 through 42.

Delete pages 4 through 6.

and when so amended that said bill do pass.

(Reference is to SB 174 as introduced.)

HEAD, Chairperson

Committee Vote: Yeas 10, Nays 0.



## SENATE MOTION

Madam President: I move that Senate Bill 174 be amended to read as follows:

Page 2, delete lines 3 through 8.

Page 2, line 21, delete "or".

Page 2, between lines 18 and 19, begin a new line block indented and insert:

**"(3) "Health care provider" has the meaning set forth in IC 34-30-12.5-2."**

Page 2, line 22, delete "surviving".

Page 2, between lines 22 and 23, begin a new line block indented and insert:

**"(3) surviving spouse of the woman; or**

**(4) child born as a result of the actions of a physician described in this chapter;"**

Page 2, line 23, delete "physician" and insert **"health care provider"**.

Page 2, line 25, delete "physician's" and insert **"health care provider's"**.

Page 2, line 29, delete "physician" and insert **"health care provider"**.

Page 2, line 41, delete "actual" and insert **"compensatory and punitive"**.

Page 3, after line 7, begin a new paragraph and insert:

**"Sec. 6. Nothing in this chapter may be construed to prohibit a person from pursuing any other remedy provided by law."**

(Reference is to SB 174 as printed January 25, 2019.)

SANDLIN

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 SENATE MOTION

Madam President: I move that Senate Bill 174 be amended to read as follows:

Page 3, after line 7, begin a new paragraph and insert:

**"SECTION 4. IC 35-43-5-3, AS AMENDED BY P.L.85-2017, SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) A person who:**

**(1) being an officer, manager, or other person participating in the**

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direction of a credit institution, knowingly or intentionally receives or permits the receipt of a deposit or other investment, knowing that the institution is insolvent;

(2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property, employment, or an educational opportunity;

(3) misapplies entrusted property, property of a governmental entity, or property of a credit institution in a manner that the person knows is unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;

(4) knowingly or intentionally, in the regular course of business, either:

(A) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity of any commodity; or

(B) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;

(5) with intent to defraud another person furnishing electricity, gas, water, telecommunication, or any other utility service, avoids a lawful charge for that service by scheme or device or by tampering with facilities or equipment of the person furnishing the service;

(6) with intent to defraud, misrepresents the identity of the person or another person or the identity or quality of property;

(7) with intent to defraud an owner of a coin MACHINE, deposits a slug in that machine;

(8) with intent to enable the person or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug;

(9) disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to promote the purchase or sale of property or the acceptance of employment;

(10) with intent to defraud, misrepresents a person as being a physician licensed under IC 25-22.5;

(11) knowingly and intentionally defrauds another person furnishing cable TV service by avoiding paying compensation for that service by any scheme or device or by tampering with facilities or equipment of the person furnishing the service; or

(12) knowingly or intentionally provides false information to a governmental entity to obtain a contract from the governmental entity;



commits deception, a Class A misdemeanor, **except as provided in subsection (b).**

**(b) However,** An offense under:

**(1) ~~subsection (12)~~ subsection (a)(12)** is a Level 6 felony if the provision of false information results in financial loss to the governmental entity; **and**

**(2) subsection (a)(6) is a Level 6 felony if the misrepresentation relates to:**

**(A) a medical procedure, medical device, or drug; or**

**(B) human reproductive material (as defined in IC 34-24-5-1.**

**(c)** In determining whether an advertisement is false, misleading, or deceptive under subsection (a)(9), there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also the extent to which the advertisement fails to reveal material facts in the light of the representations.

**(d)** A person who knowingly or intentionally falsely represents:

(1) any entity as:

(A) a disadvantaged business enterprise (as defined in IC 5-16-6.5-1); or

(B) a women-owned business enterprise (as defined in IC 5-16-6.5-3);

in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-2) designed to assist disadvantaged business enterprises or women-owned business enterprises in obtaining contracts with public agencies for the provision of goods and services; or

(2) an entity with which the person will subcontract all or part of a contract with a public agency (as defined in IC 5-16-6.5-2) as:

(A) a disadvantaged business enterprise (as defined in IC 5-16-6.5-1); or

(B) a women-owned business enterprise (as defined in IC 5-16-6.5-3);



in order to qualify for certification as an eligible bidder under a program that is conducted by a public agency designed to assist disadvantaged business enterprises or women-owned business enterprises in obtaining contracts with public agencies for the provision of goods and services;  
 commits a Level 6 felony."  
 Renumber all SECTIONS consecutively.  
 (Reference is to SB 174 as printed January 25, 2019.)

SANDLIN

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SENATE MOTION

Madam President: I move that Senate Bill 174 be amended to read as follows:

Page 3, after line 7, begin a new paragraph and insert:

"SECTION 4. [EFFECTIVE JULY 1, 2019] **(a) The legislative council is urged to assign to an appropriate study committee the topic of fertility laws.**

**(b) This SECTION expires January 1, 2020."**

(Reference is to SB 174 as printed January 25, 2019.)

YOUNG M



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 174, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 21, delete "or" and insert "**and**".

and when so amended that said bill do pass.

(Reference is to SB 174 as reprinted February 20, 2019.)

TORR

Committee Vote: yeas 12, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 174 be amended to read as follows:

Page 5, line 14, delete "laws." and insert "**laws, including gestational surrogacy.**".

(Reference is to ESB 174 as printed April 2, 2019.)

EBERHART

